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Paper No. 10

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JUL 23 2002

OFFICE OF PETITIONS

In re Application of :
Kermani, et al. :
Application No. 09/974,597 : DECISION GRANTING PETITION
Filed: October 10, 2001 :
Attorney Docket No. LIFE-029 :
FOR: DETERMINATION OF SAMPLE VOLUME :
ADEQUACY IN BIOSENSOR DEVICES :
:

This is a decision on the petition filed April 4, 2002 to accord a filing date of October 10, 2001 to the above-identified application. The petition will be treated under 37 CFR 1.53(e).

The application was deposited on October 10, 2001. However, on November 9, 2001, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application" requiring drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on October 10, 2001 describes drawing figures, but no drawing figures were filed on October 10, 2001.

As stated in MPEP 601.01(f), it is the practice of the United States Patent and Trademark Office (PTO) to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence.)

MPEP 601.01(f) also states that:

A non provisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figures in the specification, but filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g).

MPEP 601.01(g) states that if an application is filed without all of the drawing figures referred to in the specification, a "Notice of Omitted Items" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the "Notice" mailed November 9, 2001, insofar as it pertains to the statement that the application was not entitled to a filing date, was mailed in error and is hereby withdrawn.

The application is entitled to a filing date of October 10, 2001. The petition is granted.

Petitioners request that drawings figures 1-8 be accorded an October 10, 2001 filing date. Either the drawings were present in the Office on the filing date of the application or they was not. If they were not present on the filing date, they cannot be considered a part of the original disclosure of the application. Applicants do not allege in the petition that drawing figures 1-8 were present in the Office on October 10, 2001, and a review of the file confirms that drawing figures 1-8 were not present on October 10, 2001. Therefore, the application cannot be accorded an October 10, 2001 filing date with the drawings of Figures 1-8 as part of the original disclosure. The issue of new matter is one appropriately addressed during prosecution of the application after the filing date of the application has been determined.

Petitioners must submit a preliminary amendment requesting that the examiner of record consider the proposed drawings of Figures 1-8 for sufficiency of illustration and new matter. See MPEP 608.02.

No petition fee has been or will be charged in connection with the filing date matter. A \$130.00 surcharge for filing a late declaration will be charged to deposit account no. 50-0815.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of October 10, 2001 and for indication in PTO records that "0" sheets of drawings were present on filing.

Thereafter, the application will be forwarded to Technology Center 1700 for examination in due course.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.



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